

FILED

DECEMBER 21, 2009  
NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS  
DOCKET NO. BDS736-08

IN THE MATTER OF THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF	:	
	:	
JOHN G. COSTINO, JR., D.O.	:	FINAL DECISION AND ORDER
LICENSE NO. 25MB02575800	:	
	:	
TO PRACTICE MEDICINE AND SURGERY	:	
IN THE STATE OF NEW JERSEY	:	

This matter was brought before the New Jersey State Board of Medical Examiners on the Verified Complaint of Attorney General Anne Milgram by David Puteska, Deputy Attorney General, which was filed with the Board on December 5, 2007. The Complaint charged respondent with having engaged in numerous practices which violated the Medical Practice Act concerning his care and treatment of two patients (undercover agents) to whom he prescribed Percocet over seven visits (9 prescriptions) and his billing for the treatment. Respondent's actions in treating the two patients, including his repeated prescribing of a Schedule II controlled dangerous substance, Percocet, to each of them, was alleged to constitute gross or repeated acts of negligence; dishonesty, fraud or deception; professional misconduct; engaging in acts constituting moral turpitude or relating adversely to the activity regulated by the Board; indiscriminate prescribing of controlled dangerous

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substances; and a failure to be of good moral character as required for licensure, all in violation of N.J.S.A. 45:1-21 and N.J.S.A. 45:9-6. The conduct was also alleged to constitute failures to comply with regulations of the Board regarding the prescribing of controlled dangerous substances, and other medications, and failure to maintain proper patient records, all in violation of N.J.S.A. 45:1-21(h) and N.J.A.C. 13:35-7.6, 7.1A, and 6.5.

Respondent filed an answer to the complaint on December 11, 2007. By his answer, respondent admitted many of the allegations of the complaint, while denying certain of the allegations concerning for example, the diagnoses which were made, the duration of the patient visits, whether the patients had a lack of medical "problems" or complaints or pain, and respondent left petitioner to its proofs regarding several allegations.

The State's Application for Temporary Suspension of License was heard by the Board on December 12, 2007, and was granted on that date. A temporary suspension of respondent's license was effective on December 17, 2007, and has been in effect since that time. The matter was referred to the Office of Administrative Law, and following extensive pre-hearing procedures, (including various motions regarding depositions and other discovery, with interlocutory appeal of the results), hearings were held before W. Todd Miller, ALJ, on four (4) dates beginning December 4, 2008 and ending January 29, 2009. The Initial Decision of ALJ Miller was

issued on May 14, 2009. That Decision is incorporated by reference, as if fully set forth herein. Respondent filed exceptions as to the Initial Decision on May 26, 2009, with a response forwarded by complainant on June 2, 2009. No exceptions were filed on behalf of the complainant; however a response to the Attorney General's submission was forwarded by respondent on June 10, 2009.

The Initial Decision of the ALJ was considered by the Board at its next meeting following receipt of respondent's reply on June 15, 2009. On July 8, 2009, respondent appeared represented by Glenn Zeitz, Esq. Deputy Attorney General David Puteska appeared for the State.<sup>1</sup>

Following hearing of oral argument on exceptions, the Board made the following findings of fact and conclusions of law.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After consideration of the entirety of the Initial Decision and the totality of the record, including transcripts, audio recordings and exhibits, the Board adopts the findings of fact and

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<sup>1</sup>Following the Board's decision on that date, respondent filed a motion to delay the issuance of the final decision and for a remand to the Office of Administrative Law to supplement the record with new evidence. The matter was considered before the Board on September 9, 2009, at which time respondent's motion to remand the matter was denied, however the Board re-opened the record to include Exhibit I of respondent's August 11, 2009 submission, a chiropractic record of T.A. of July 26, 2007. The Board found that the materials presented by respondent would not change the result reached in this matter.

conclusions of law as set forth in the Initial Decision of the Administrative Law Judge in this matter in toto. In so adopting the Administrative Law Judge's findings we have carefully considered the claims of respondent raised in thirty five (35) single spaced pages of exceptions. Although we have found it unnecessary to respond to each of the points raised, many of which simply express disagreement with the findings, significant exceptions include that respondent is being held to a standard of practice above what a general practitioner must adhere to - that is of a pain management specialist - although he has lesser training. As respondent practiced as a pain management specialist, (his office even included a sign representing that he provided pain management services) holding him to such standards is appropriate. However, we agree with the argument of the State that the findings in this matter evidence such remarkably poor medical judgment that even judged by the standards of a general practitioner the ultimate conclusions in this matter would remain the same. We find in our own expertise that respondent, even if judged as a general practitioner, should be expected to be knowledgeable regarding the significant medical facts and concepts required for appropriate prescribing which were not present in this matter.

Similarly the Board does not find significant respondent's ~~exception that the ALJ's decision is flawed as the ALJ did not~~ mention in his opinion witness Joseph Landis, an investigator who

went to respondent's office to see if he could obtain drugs in December of 2005, and did not. That respondent may have prescribed appropriately to some other individual 16 months prior to the occurrences in the visits of the undercover officers in this case, is not relevant, nor does it effect the outcome. There was no allegation that respondent prescribed improperly to all of his patients - nor is such proof necessary.

Much of respondent's filed exceptions consist of reiteration of testimony of the undercover agents and respondent's experts in an apparent effort to have the Board overturn the ALJ's credibility determinations and findings as to Dr. Jermyn, Glenda Hamilton and the undercover patients. Respondent thereafter engages in lengthy discussion of testimony offered by both prosecution and defense witnesses. Respondent's extensive testimonial references appear to suggest that the ALJ should have accepted the testimony of respondent's witnesses and to the extent it conflicted with the testimony of the State's witnesses, discounted or declined to adopt the testimony offered by the State.

With regard to respondent's claim that the ALJ should have found respondent's witnesses credible and should have discounted or rejected testimony offered by the State's witnesses, we note at the outset that it has been repeatedly recognized that credibility determinations are best made by the trier of fact. See Clowes v. Terminix, Inc., 109 N.J. 575, 587 (1988) (ALJ who hears live

testimony is in the best position to judge a witness' credibility). It has thus been recognized that an agency reviewing an ALJ's credibility findings relating to a lay witness may not modify or reject the findings unless the agency determines from a review of the record that the ALJ's findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent and credible evidence in the record. S.D. v. Div. Med. Assist. and Health Serv., 349 N.J. Super. 480 (App. Div. 2002); N.J.S.A. 52:14b-10(c); N.J.A.C. 1.1-18.6(c). The ALJ clearly discussed and considered the testimony of all witnesses, and convincingly explains why he found cause to accept the testimony offered by complainant's witness and to discount (or find less credible) testimony offered by respondent's witnesses.

Significantly, however, we agree in our own expertise with the Findings and Conclusions of the ALJ rejecting the expert testimony of Dr. Jermyn, as unreliable and questionable, when he initially attempted to validate respondent's prescribing of pain killers to someone who did not complain of pain. As later admitted by Dr. Jermyn, he himself would never prescribe pain killers to someone who did not present with pain, nor should they be prescribed for relaxation or to "unwind". As admitted by the expert, and found by the ALJ, although pain killers may be prescribed appropriately to ~~treat musculoskeletal or nociceptive injury~~, they should never be prescribed to patients who do not present with those issues and

without meaningful examination to reach such a diagnosis. There were no meaningful examinations initially or in follow-up visits here. We agree in our expertise with this analysis.

Despite respondent's attacks on the meaning or credibility of the testimony of the undercover agents, (T.A. and M.A.), we agree with the ALJ's conclusions that their testimony was "trustworthy, reliable and credible." Further our review of the recordings and transcripts of the undercover visits comports with and bolsters that testimony. This finding as to T.A. is not significantly affected by respondent's introduction of a July 26, 2007 chiropractic record of M.A. at the time of respondent's motion for remand (See, Exhibit I). First the undercover agent was seeing respondent much like an actress - and she presented to him repeatedly as having no pain. Whether the undercover officer actually had any condition is not significant in the circumstances of this matter. Second, respondent's claim that M.A. had acute thoracic and lumbar strain and sprain at the time of her April 2007 or later visits is belied by his utter failure, as documented by the testimony and audio recordings, to perform examinations for such a condition, such as range of motion tests, palpation for tenderness or neurological examination. Finally, a July 26, 2007 chiropractic record is of little relevance to M.A.'s initial presentation to respondent. Thus we find the chiropractic record provides little reason to question the ALJ's findings on

credibility and persuasiveness of the witnesses. Upon review of the audio recordings and record, we agree with the ALJ as to credibility.

We also find no basis to disturb the Conclusions of Law of the ALJ. The clear findings that two patients who came to respondent's office seeking pain killers, with no medically significant complaints of pain, in order to relax or unwind, with little legitimate examination, were repeatedly prescribed Percocet, a Schedule II pain killer, in increasing dosages culminating in a visit in which respondent suggested prescribing a double amount (2 per day) in order not to arouse suspicion upon a fabricated diagnosis of overuse syndrome synonymous with sprain/strain of the thoracic/lumbar spine, clearly supports the ALJ's conclusions. Thus we agree that respondent's treatment of the agents was grossly and repeatedly negligent in violation of N.J.S.A. 45:1-21 (c); that his actions in prescribing CDS involved the use of dishonesty, fraud, deception and misrepresentation in violation of N.J.S.A. 45:1-21(b); acts constituting moral turpitude or relating adversely to medical practice in violation of N.J.S.A. 45:1-21(f); a failure to comply with an Act or regulation of the Board in violation of N.J.S.A. 45:1-21(h); a failure to follow regulations for prescribing medication or CDS in violation of N.J.A.C. 13:35-7.1A and N.J.A.C. 13:35-7.6 respectively; indiscriminate prescribing of CDS in violation of N.J.S.A. 45:1-21(m) and/or demonstrates a

failure to be of good moral character required for licensure as a physician pursuant to N.J.S.A. 45:9-6.

Similarly we conclude as to Count II that the findings are well-documented that respondent fabricated the patient's medical records to justify his diagnosis and collect insurance payments, giving a false impression that he was treating patients with real injuries and pain. We also agree that respondent's compliance with the CPT billing method, attempting to comply with literal definitions for insurance billing, does not render the coding appropriate, insulate the physician from the consequences of billing fraud, nor permit him to profit from improper activity - here the illegal prescribing of pain killers. Once the physician submitted a bill based on a fraudulent diagnosis, the billing was fraudulent as well. All of these findings amply support the ALJ's conclusions of law which we adopt, that the billing for each of the undercover visits constituted dishonesty, fraud, deception, misrepresentation or false pretense; professional misconduct; engagement in acts of moral turpitude or relating adversely to medical practice; failure to comply with an Act or regulation administered by the Board (regarding excessive fees); and/or failure to be of the good moral character required to hold a license as a physician; in violation of and/or pursuant to N.J.S.A. 45:1-21(b), (e), (f), (h), and N.J.S.A. 45:9-6 respectively.

### DISCUSSION ON PENALTY

Given the egregious nature of the findings regarding respondent's conduct and his status as a second offender, the Board agrees with the ALJ and finds that revocation of license is the only appropriate sanction. Respondent's actions bespeak a physician engaging in pervasive and flagrant disregard of any appropriate standard of practice. Indeed, his actions were little more than a physician "covering" what he thought were illegal drug dealings by the patients. Holding himself out as a pain management specialist, respondent prescribed Percocet, a Schedule II pain killer repeatedly to two (2) patients with no medically significant complaints of pain-indeed with repeated denials of pain, for the expressed purpose of "relaxation" or to "unwind," upon a fabricated diagnosis of overuse syndrome synonymous with sprain and strain of the thoracic or lumbar spine, without any appropriate examination of that area. Compounding these egregious improprieties, respondent created false patient records, admittedly copying the same exam note for each patient visit. We agree with the ALJ, that respondent did nothing more than aid and abet the use of pain killers for invalid reasons. Such flagrant abuse of any appropriate standard of practice mandates a significant period of time out of practice. We will however, grant credit to respondent ~~for the period of time he has been out of practice since his~~ license was suspended upon prior application of the State.

Respondent presented mitigation testimony of non-physician witnesses who testified that he gave good patient care, that he has a fine reputation within the community and is held in high esteem. Additionally, they asserted, as did respondent in a written submission, that there is a shortage of physicians within the community and his services are needed. Several physician witnesses also testified that the feedback from patients they refer to respondent is positive, and that he gives patients good care and takes patients many other doctors do not.

The Board recognizes that respondent has presented many witnesses who support him, however that does not alter the overwhelming findings of impropriety in this matter. We have no doubt that respondent is well regarded by some of his colleagues and his patients. This does not convince us that any result other than the most severe sanction is appropriate in this case. Additionally, we are mindful that this is not the first occasion that disciplinary proceedings have been brought against this licensee - he was sanctioned in 1998 for sexual misconduct involving engaging in sexual relationships with two patients concurrent with their treatment.

The current matter alone involving prescribing in a manner which demonstrates an absolute disregard of the statutes, regulations, and standards governing medical practice, coupled with fraudulent billing practices, dictates the result of revocation

recommended by the ALJ, including a lengthy time out of practice. That this case followed an earlier matter including serious impropriety only serves to underscore the necessity of the sanctions imposed herein.

As to imposition of costs and monetary penalties in this matter, Respondent argued that the costs sought by the State are too high. He claims attorney's fees should be set by dividing a DAG's weekly salary by 40 hours to obtain an hourly rate. Respondent also asserts he has already paid his own legal fees, and transcript costs and as he has been unemployed since December of 2007 when his license was suspended, he should not pay attorney fees in this matter. Respondent submitted tax returns showing substantial income, and an uncertified statement of assets in support of his position.

We have reviewed the costs sought by the State and find the application sufficiently detailed and the amount reasonable given the length and complexity of the prosecution of this matter. Our analysis follows.

The Attorney General's certification in this matter extensively documented the time of the attorney expended in these proceedings, detailing costs beginning in September 2007 with attachments. The Attorney General documented a total of \$70,733.50 in counsel and paralegal fees (which did not include any fees for time expended after June 2, 2009 and travel expenses of

\$554.95, that had been incurred in the course of the proceedings regarding respondent. The Attorney General's certification was supported by the time sheets of DAG David Puteska and included information derived from a memorandum by Nancy Kaplan, then Acting Director of the Department of Law and Public Safety detailing the uniform rate of compensation for the purpose of recovery of attorney fees established in 1999 and amended in 2005, setting the hourly rate of a DAG with ten plus years of legal experience at \$175.00 per hour and \$55.00 per hour for a paralegal. This document has been presented and accepted many times in the past in professional licensing proceedings. We are satisfied that the record adequately details the tasks performed and the amount of time spent on each by the Deputy Attorney General (to include investigation, research, writing, discovery, appearances, motions, and briefs, conferences, preparation for trial, trial presentation, supervision and travel).<sup>2</sup> We are satisfied the tasks performed, while time-consuming, needed to be performed and that in each instance the time spent was reasonable.

The rate charged by the Division of Law of \$175.00 for a DAG

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<sup>2</sup>The activities in this case included preparation and presentation of an application for temporary suspension of license in December 2007, defense of an application in Superior Court to enjoin the proceedings, discovery including depositions of two State witnesses, defense of motions seeking medical records, and depositions including an interlocutory appeal to the Board and then the Appellate Division, a 4 day hearing, preparation of proposed findings of fact and exceptions.

with 10 or more years of experience has been approved in prior litigated matters and appears to be well below the community standard. Moreover, we find the certification attached to the billings to be sufficient. We note that no fees have been sought for any time after June 2, 2009, following which oral arguments on exceptions, response and appearance on a Motion for Remand, and additional transcript costs were incurred. We find the application to be sufficiently detailed to permit our conclusion that the amount of time spent on each activity, and the overall fees sought are objectively reasonable as well. (See, Poritz v. Stang, 288 N.J. Super 217 (App. Div. 1996)). We find the Attorney General has adequately documented the legal work necessary to advance the prosecution of this case. We are thus satisfied that the Attorney General's claims are reasonable especially when viewed in the context of the seriousness and scope of the action maintained against respondent. We further find that respondent has provided only an uncertified statement of assets and tax returns demonstrating substantial income and thus has not documented an inability to pay such costs.

As to the other costs sought, sufficient documentation has been submitted to support imposition of the following costs (including the attorneys fees discussed above). Costs are ~~traditionally imposed pursuant to N.J.S.A. 45:1-25 so as not to~~ pass the costs of proceeding onto licensees who support Board

activities through licensing fees:

Medical Board and OAL transcripts	\$ 6,521.00
Attorney and Paralegal fees	70,733.50
Travel expenses	<u>554.95</u>
Total costs:	\$77,809.45

IT IS THEREFORE ON THIS 25<sup>TH</sup> DAY OF NOVEMBER 2009

As orally ordered by the Board on the record on July 8, 2009:<sup>3</sup>

**ORDERED:**

1. That the license of respondent John G. Costino, Jr., D.O. to practice medicine and surgery in the State of New Jersey be and hereby is revoked, with no reapplication for a period of (5) five years. However, respondent shall be granted credit for the period of time his license has been temporarily suspended since December 17, 2007. Any application for reinstatement, which may be made on December 16, 2012 or thereafter, must demonstrate full compliance with this Order, as well as fitness and competency to practice medicine and surgery, including an appearance before the Board or a Committee thereof. Any reinstatement of license may be conditioned upon such restrictions and limitations as the Board deems necessary to protect the public health, safety and welfare.

2. Respondent shall pay monetary penalties in the amount of

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<sup>3</sup>In connection with his motion for remand in August of 2009, Respondent requested that the written decision in this matter not be issued and waived any right to object to late issuance. The Motion for Remand was heard on September 9, 2009.

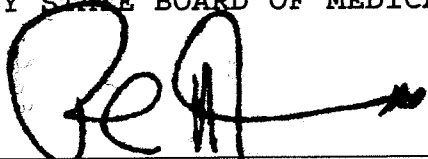
\$10,000.00, representing \$5,000.00 for each of the two (2) counts for which violations have been found in this matter. Such penalties shall be paid within 30 days of the date of this Order or in such installments as authorized by the Board on application prior to that time, by certified check or money order payable to the Treasurer, State of New Jersey and delivered to Mr. William Roeder at the Office of the Board of Medical Examiners, 140 E. Front Street, P.O. Box 183, Trenton, New Jersey 08625. Failure to timely pay such penalties result in the filing of a certificate of debt and such other proceedings as are permitted by law.

3. Respondent shall pay costs in the amount of \$77,809.45, including attorney's fees (\$70,733.50), and costs of transcription and court reporting services and travel expense (in the amount of \$7,075.95). Such costs shall be paid within 30 days of the date of this Order, or in such installments as authorized by the Board on application prior to that time, by certified check or money order payable to the Treasurer, State of New Jersey and delivered to Mr. William Roeder at the Office of the Board of Medical Examiners, 140 East Front Street, P.O. Box 183, Trenton, New Jersey 08625. Failure to timely pay such penalties shall result in the filing of a certificate of debt and such other proceedings as are permitted by law.

~~4. Respondent shall comply with all parts of the Board's~~  
directives applicable to disciplined licensees, whether or not

attached hereto.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

A handwritten signature in black ink, appearing to read 'Paul Mendelowitz', written over a horizontal line.

By: \_\_\_\_\_

Paul Mendelowitz, M.D.  
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF BOARD  
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.